Kerajaan Malaysia v Muhammad Shafee bin Md Abdullah

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-21NCvC-92–05 OF 2021
ROZ MAWAR JC
28 SEPTEMBER 2022

Civil Procedure — Stay of proceedings — Test — Whether applicant for stay of proceedings must also satisfy 'special circumstances' test commonly used in stay of execution proceedings — Defendant applied to stay plaintiff's application for summary judgment under O 14 of Rules of Court 2012 in respect of unpaid income tax owing by defendant — Whether grounds raised by defendant did not constitute special circumstances to warrant stay — Whether granting stay would deprive plaintiff of its legal right to obtain judgment against defendant for unpaid income tax — Whether court was bound by settled legal principles to allow suit for recovery of unpaid tax to proceed unless special circumstances warranted a stay of proceedings

The defendant applied to stay the plaintiff's application for summary judgment against him under O 14 of the Rules of Court 2012 ('the ROC') for unpaid income tax amounting to RM9,414,708.32. The amount constituted arrears resulting from additional assessments done for the years 2011 until 2014 and also for 2016. The grounds for the defendant's application were that: (a) the determination of the summary judgment application would, on the principle of res judicata, render nugatory the defendant's pending appeals to the Special Commissioners of Income Tax ('SCIT') against the notices of additional assessments; (b) there was mala fide, abuse of process and collateral attack by the plaintiff; (c) novel legal issues concerning the plaintiff's suit against the defendant were pending determination by the Federal Court; and (d) there were significant errors in the computation of tax under the additional assessments.

Held, dismissing the stay application:

(1) The issue of res judicata did not arise as the finding of facts in a dispute over income tax assessments was under the purview of the SCIT. There was no question of the defendant's appeal to the SCIT being rendered nugatory if the proceedings in this court were to proceed. This court was bound by high authority to hold that the dispute on the tax assessments must be determined by way of appeal to the SCIT, as per s 99 of the Income Tax Act 1967, and that any disputes on questions of law at the hearing before the SCIT would then be brought to the High Court by way of case stated. The plaintiff's suit against the defendant was for recovery of debt. The rules of natural justice would not be breached if the

proceedings in this court took place before the defendant's appeal before the SCIT was heard (see paras 14–17 & 19).

(2) The suit filed by the plaintiff was purely for recovery of unpaid income tax and was independent of any other criminal matters that the defendant faced or might have. The plaintiff's claim could not collapse based merely on allegations of ill-motive and mala fide raised by the defendant. Such allegations could not constitute special circumstances to justify the grant of a stay of proceedings. In any event, a stay of proceedings would not be able to determine any of the allegations made by the defendant. At this juncture, the court was unable to see any abuse of process on the part of the plaintiff (see paras 23–25).

(3) The defendant's contention that stay of proceedings should be granted as certain constitutional issues were pending determination before the Federal Court was untenable. Judgment had yet to be entered against the defendant for the court to consider any stay of execution. A stay of proceedings, on the other hand, meant that the plaintiff would be deprived of achieving what it was legally entitled to on the premise of public interest. The court was bound by settled legal principles to allow a suit for recovery of tax due and payable to proceed unless special circumstances warranted a stay of the proceedings (see paras 28 & 31–32).

(4) The contention that there were errors in computation of the tax payable under the additional assessments was a matter solely for the SCIT to determine and did not constitute special circumstances to warrant the grant of a stay of proceedings (see paras 33–35).

[Bahasa Malaysia summary

Defendan telah memohon penangguhan prosiding permohonan plaintif untuk penghakiman terus menurut A 14 Kaedah-Kaedah Mahkamah 2012 ('KKM') untuk cukai pendapatan yang belum dibayar berjumlah RM9,414,708.32. Jumlah tersebut merupakan tunggakan hasil dari taksiran tambahan bagi tahun 2011 hingga 2014 dan tahun 2016. Alasan permohonan defendan ialah: (a) keputusan permohonan penghakiman terus itu akan, menurut prinsip res judicata, menyebabkan rayuan defendan kepada Pesuruhjaya Khas Cukai Pendapatan ('PKCP') terhadap notis taksiran tambahan tersebut menjadi sia-sia; (b) terdapat mala fide, penyalahgunaan proses dan tindakan bertindih oleh plaintif; (c) isu undang-undang baharu berkaitan saman plaintif terhadap defendan sedang ditentukan di Mahkamah Persekutuan; dan (d) terdapat kesilapan besar di dalam pengiraan cukai taksiran tambahan.

Diputuskan, menolak permohonan penangguhan prosiding:

(1) Isu res judicata tidak timbul kerana penemuan fakta di dalam pertikaian

taksiran cukai pendapatan adalah di bawah bidang kuasa PKCP. Tidak timbul soal rayuan defendan kepada PKCP akan menjadi sia-sia sekiranya prosiding di Mahkamah ini diteruskan. Mahkamah ini terikat dengan otoriti yang kuat bahawa pertikaian mengenai taksiran cukai haruslah ditentukan melalui rayuan kepada PKCP, menurut s 99 Akta Cukai Pendapatan 1967, dan sebarang pertikaian mengenai persoalan undang-undang ketika perbicaraan di hadapan PKCP kemudiannya akan dibawa ke Mahkamah Tinggi menurut kes yang dirujuk. Saman plaintif terhadap defendan adalah untuk pembayaran hutang. Keadilan semula jadi tidak akan dilanggar sekiranya prosiding di mahkamah ini berlangsung sebelum rayuan defendan sebelum PKCP didengar (lihat perenggan 14–17 & 19).

(2) Saman yang difailkan oleh plaintif adalah untuk mendapatkan semula cukai pendapatan yang belum dibayar sahaja dan tidak mempunyai kaitan dengan sebarang perkara jenayah lain yang mungkin dilakukan defendan. Dakwaan plaintif tidak boleh menjejaskan tuntutan tersebut dengan hanya berdasarkan dakwaan motif jahat dan mala fide oleh defendan. Dakwaan sedemikian tidak boleh menjadi keadaan khas untuk membenarkan penangguhan prosiding ini. Dalam apa jua keadaan, penangguhan prosiding ini tidak akan dapat menentukan sebarang dakwaan defendan. Pada ketika ini, tidak terdapat sebarang penyalahgunaan proses di pihak plaintif (lihat perenggan 23–25).

(3) Hujahan defendan bahawa penangguhan prosiding harus dibenarkan kerana isu perlembagaan sedang menunggu pelupusan di hadapan Mahkamah Persekutuan tidak dapat dipertahankan. Penghakiman masih belum dimasukkan terhadap defendan untuk mahkamah mempertimbangkan sebarang penangguhan pelaksanaan. Penangguhan prosiding, sebaliknya, bermakna plaintif akan dihalang atas haknya di sisi undang-undang dan menyalahi kepentingan awam. Mahkamah ini terikat dengan prinsip undang-undang untuk membenarkan saman bagi mendapatkan semula cukai yang perlu dibayar melainkan terdapat keadaan-keadaan khas yang membenarkan penangguhan prosiding (lihat perenggan 28 & 31–32).

(4) Hujahan bahawa terdapat kesilapan dalam pengiraan cukai yang perlu dibayar di bawah taksiran tambahan adalah dibawah bidangkuasa PKCP untuk menentukannya dan bukanlah satu keadaan khas untuk membenarkan penangguhan prosiding ini (lihat perenggan 33–35).]

Cases referred to

Aeon Credit Services (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (WA-25-326–12 of 2017) (unreported), CA (refd)
Arumugam Pillai v Government of Malaysia [1975] 2 MLJ 29, FC (refd)
Arumugam Pillai v Government of Malaysia [1980] 2 MLJ 283, FC (refd)

Kerajaan Malaysia lwn Berjaya Times Square Sdn Bhd [2018] MLJU 616; [2018] 1 LNS 720, HC (distd)
Kerajaan Malaysia v Dato' Hj Ghani Gilong [1995] 2 MLJ 119, FC (refd)
Kerajaan Malaysia v Ekran Bhd [2006] 2 MLJ 749, HC (distd)
Kerajaan Malaysia v Jasanusa Sdn Bhd [1995] 2 MLJ 105, SC (refd)
Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd [2004] 1 MLJ 257; [2003] 4 CLJ 1, FC (refd)
Layar Baiduri Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2020] 8 MLJ 643, HC (refd)
Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd [2002] 3 MLJ 49; [2002] 3 CLJ 380, CA (folld)
Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561; [2017] 5 CLJ 526, FC (refd)
Sun Man Tobacco Co Ltd v Government of Malaysia [1973] 2 MLJ 163, FC (folld)
Universal Trustee (M) Bhd v Lambang Pertama Sdn Bhd & Anor [2015] 7 MLJ 305; [2014] 1 LNS 797, HC (refd)
Wu Shu Chen (sole executrix of the estate of Goh Keng How, deceased) v Raja Zainal Abidin bin Raja Hussin & Anor [1995] 3 MLJ 224, HC (refd)

Legislation referred to

Anti-Money Laundering Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ss 4(1), 78, 79, 113(1)(a)
Courts of Judicature Act 1964 s 73
Federal Constitution art 121
Income Tax Act 1967 ss 99, 106, 106(3)
Rules of Court 2012 O 14 r 1, O 92 r 4

Muhammad Faqrol Syazreen Mohd Ghause (with Norhisham Ahmad and Al-Hummidallah Idrus) for the plaintiff.
Md Farhan Shafee (with Wee Yeong Kang and Rajan Navaratnam) for the defendant.

Roz Mawar JC:

THIS APPLICATION

[1] The orders sought for by the defendant are as follows:

(a) a stay of the proceedings pending the disposal of the defendant's appeals by the Special Commissioner of Income Tax Malaysia (SCIT) and/or all other subsequent judicial remedies arising afforded to the defendant; and

(b) a stay of the proceedings for this action pending the disposal of the applications for leave to appeal at the Federal Court in the Civil

A Applications No 08(i)-383–09 of 2021(W) Mohd Najib Hj Abdul Razak and 08(i)-384–09 of 2021(W) Mohd Nazifuddin Mohd Najib (the constitutional matters).

B **[2]** The proceedings in question is that of the plaintiff's application for a summary judgment under O 14 r 1 of the ROC for a sum of RM9,414,708.32 with interest of 5%pa from the date of judgment until realization with costs. This is said to be the amount payable by and due from the defendant being the total arrears of income tax from the tax increase of the additional assessments for the years 2011, 2012, 2013, 2014 and 2016.

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[3] The reasons supporting the application are as stated in the affidavits in support of Wee Yeong Kang and of the defendant (encls 27, 31, 36 and 37):

D (a) the defendant had filed his appeals (Forms Q) against the notices of additional assessment for 2011, 2012, 2013, 2014 and 2016 to the Inland Revenue Malaysia on 27 June 2019. These were then referred to the SCIT on 23 December 2019. To continue with this proceeding would render nugatory the defendant's appeals before the SCIT the

E defendant would not be restored to his original position and will suffer irreparable financial loss;

(b) there was mala fide, abuse of process and collateral attack by the plaintiff;

(c) there are novel and legal issues in this suit that requires the determination

F of the Federal Court whereby the dates of the said civil applications were fixed on 16 February 2021; and

(d) there are significant errors in the computation of the additional tax assessments for the years 2011, 2012, 2013, 2014 and 2016.

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[4] Those the defendant contends amount to special circumstances for which a stay was said not to prejudice the plaintiff.

CHRONOLOGY AND BACKGROUND OF THIS APPLICATION

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[5] The defendant affirmed the following:

(a) on 30 May 2019 the plaintiff raised additional assessments (Form JA) for 2011, 2012, 2013, 2014 and 2016 against the defendant — the total amounted to RM8,742,327.86;

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(b) on 20 June 2019 the defendant filed his appeals (Form Q) to the Inland Revenue Board;

(c) on 23 December 2019 the Dispute Resolution Department referred the defendant's Form(s) Q to the Special Commissioner of the Income Tax;

(d) on 6 May 2021 as the defendant had yet to settle the said amount outstanding, the plaintiff through the Inland Revenue Board of Malaysia filed this civil suit seeking RM9,414,708.32 from the defendant as it was contended that the defendant had failed to pay tax assessed within the stipulated period, the amount of which included the penalties imposed;

(e) on 20 May 2021 the writ of summons and statement of claim (encls 1 and 2) were served on the defendant;

(f) on 30 May 2021 the defendant filed the memorandum of appearance (encl 4);

(g) on 11 August 2021 the defendant duly filed his defence and counterclaim (encl 10);

(h) on 1 September 2021 the plaintiff replied to the defence and filed its defence to the counterclaim (encl 13);

(i) on 27 September 2021 the defence replied to the plaintiff's defence to counterclaim (encl 16);

(j) on 27 September 2021 the plaintiff filed an application for summary judgment against the defendant (encl 17);

(k) on 27 September 2021 the plaintiff filed an application to strike out the defendant's counterclaim against the plaintiff (encl 22);

(l) on 18 October 2021 the defendant filed an application to allow the filing of his counterclaim (encl 26); and

(m) On 3 November 2021 the defendant filed this application for a stay of the proceedings (encl 28).

THE LAW ON STAY OF PROCEEDINGS

[6] An appeal in itself does not operate as a stay whether it for execution or proceedings, as provided for by s 73 of the Courts of Judicature Act 1964.

[7] As submitted by both parties, the leading authority on stay is *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257; [2003] 4 CLJ 1 where the applicant, in this instance, the defendant, must illustrate that although an appeal does not operate as a justification for a stay, nugatoriness of an appeal would constitute a special circumstance, at p 268 (MLJ); p 16 (CLJ):

> It is therefore clear beyond doubt that there are many factors that may constitute special circumstances and the fact that an appeal would be rendered nugatory if stay was refused is the most common one. In other words, a special circumstance is the genus of which nugatoriness is a species. If it has been shown that an appeal would

be rendered nugatory if stay was refused what it means is that a special circumstance has been established.

[8] Though the decision was addressing the position of a stay of execution, the same threshold has been applied for applications to stay proceedings — *Universal Trustee (M) Bhd v Lambang Pertama Sdn Bhd & Anor* [2015] 7 MLJ 305; [2014] 1 LNS 797. The stay of proceedings applied for here is not an appeal to another High Court or a superior court but to SCIT. Nonetheless, the Supreme Court in *Kerajaan Malaysia v Jasanusa Sdn Bhd* [1995] 2 MLJ 105 acknowledged that whether a successful appeal to the SCIT would be rendered nugatory by a refusal to stay is a relevant consideration although in that case the stay was for the execution and not proceedings.

ARE THERE SPECIAL CIRCUMSTANCES TO WARRANT A STAY OF PROCEEDINGS?

[9] The defendant who bears the heavier burden for this application for a stay of proceedings, relies on the contention that his appeal to SCIT will likely be rendered nugatory and that the total amount claimed will cause colossal financial damage to the defendant. It was submitted that the enforcement of such judgment will risk bankruptcy proceedings.

[10] This court opines that the part on causing colossal financial damage to the defendant is premature as at this juncture, there is no judgment against the defendant. Thus, the concern about losing his livelihood and legal practice has yet to arise. That argument perhaps would best be deliberated at the point where the enforcement of a judgment is in contention. Here the task at hand is on stay of proceedings.

[11] Even when it comes to stay of execution, the fact that the amount is huge and there was an appeal pending does not constitute special circumstances as held in *Wu Shu Chen (sole executrix of the estate of Goh Keng How, deceased) v Raja Zainal Abidin bin Raja Hussin & Anor* [1995] 3 MLJ 224. That case suggests that it may tantamount to such if one of the parties, here it would be the Inland Revenue Board, is proven to be insolvent and would not be able to return the moneys to the defendant should in the end there be adjudicated an overestimated or overassessment of the tax.

[12] The Court of Appeal in *Aeon Credit Services (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (WA-25-326–12 of 2017) (unreported) acknowledged this and went on to uphold the Federal's Court's ruling in *Kosma Palm Oil Mill Sdn Bhd* that the alleviation of the defendant's problem is not a special circumstance that warrants a stay — at p 270 (MLJ); p 18 (CLJ):

It is not granted to give the unsuccessful party time to satisfy the judgment or to alleviate his problems. A

[13] On the nugatoriness issue, the very able learned counsel for the defendant submitted that there may be issue of res judicata as this court is of a superior jurisdiction to the SCIT. It was impressed before this court that s 99 of the Income Tax Act 1967 provides for the right to appeal to SCIT and to deny that right to be heard would amount to breach of natural justice. It is submitted further that there would be a conundrum if this court proceeds to hear the matter and make findings of facts which would bind the SCIT and as such the appeals before the SCIT would be rendered nugatory as by the principle of res judicata the defendant would not be able to pursue further on the findings. B C

[14] This court struggles to accept the argument on res judicata put forth. The finding of facts in dispute over income tax assessment is under the purview of SCIT. As provided for under s 106 of the Act: D

> ... the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under subsection 103(3), (5) or (7). E

[15] So, the forum on arguments on findings of facts would be the SCIT. Actually, even when it comes to plea of limitation as to the assessment of the taxes, the court has no power to rule — reference is made to the Federal Court's decision in *Kerajaan Malaysia v Dato' Hj Ghani Gilong* [1995] 2 MLJ 119 where the reasons for concluding so is as follows: F

> If counsel for the taxpayer were correct in his contention that the plea of limitation based on sub-ss (1) and (3) of s 91 of the Act is available to him in proceedings for recovery of tax brought in court as well as in proceedings before the Special Commissioners, then a decision by the High Court on the question of limitation would prevent the Special Commissioners from deciding the same question as they would regard themselves as bound by the decision of the High Court thereby abdicating their fact finding function of determining whether there has been fraud or wilful default within the meaning of sub-s 3(a) of s 91 of the Act. Alternatively, even if the Special Commissioners do not regard themselves as so bound, it could lead to inconsistent decisions by the High Court and the Special Commissioners on the identical question of limitation. These would not be reasonable results and, what is unreasonable, cannot be the law. G H
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> In so holding, we do not overlook the point that further appeals lie to the High Court by way of case stated on a point of law, against the decision of the Special Commissioners pursuant to para 34 of Schedule 5 to the Act, and thereafter, to the Federal Court. Therefore, it is perfectly possible that the plea of limitation in this case may ultimately arise for determination by this court, but this would be by way of a different route, and the powers which this court would exercise in such a situation would not be full appellate powers. This is because the object of an appeal I

A by way of case stated is clearly to provide a limited right of appeal from the Special Commissioners to the High Court, in cases where a point of law is involved. The High Court would then confine itself to the point of law appearing in the case stated, and having answered it, would apply it to the facts as found by the Special Commissioners, who are judges of fact. But 'in finding the facts and drawing B inferences of secondary fact from them, they must not misdirect themselves and they must draw conclusions from facts having probative value' (per Lord Dipiock in *Lim Foo Yong Sdn Bhd vComptroller-General of Inland Revenue* [1986] 2 MLJ 161; [1986] 1 LNS 1).

Thereafter, an appeal may be brought from the decision of the High Court to the C Federal Court, but in exercising that jurisdiction, the Federal Court, would be subject to the same restrictions as that to which the High Court is subject. In other words, in such a situation, the Federal Court too would not be exercising full appellate powers unlike an appeal from a decision of the High Court given in the exercise of its original jurisdiction when it would be exercising full appellate powers.

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[16] As such, the issue of res judicata does not arise. There is no issue of nugatoriness of the defendant's appeal to SCIT should proceedings in this court were to proceed. The Federal Court in *Dato Hj Ghani Gilong* upheld that:

E For the sake of completeness, we must add that in a situation where summary judgment has been entered against a taxpayer in proceedings by way of suit for the recovery of tax, and the taxpayer has appealed to the Special Commissioners and, if in such appeal, a plea of limitation is successfully invoked by such taxpayer, then we are of the view that the result of such appeal before the Special Commissioners (unless reversed on further appeal), being in conflict with the order summary F judgment, must override the order for summary judgment. We say so because the Special Commissioners are the judges of fact, and have jurisdiction to consider not only a plea of limitation based on sub-s (1) and (3) of s 91 of the Act but also other issues such as whether the amount of tax sought to be recovered is excessive, incorrectly assessed or incorrectly increased, all of which are issues which the court G in proceedings for recovery of tax by suit is prohibited by s 106(2) of the Act from entertaining.

[17] Therefore, the issue of nugatoriness of the defendant's appeals before the SCIT is not tenable. Applying the principle enunciated in *Ming Ann* H *Holdings Sdn Bhd v Danaharta Urus Sdn Bhd* [2002] 3 MLJ 49; [2002] 3 CLJ 380, this contention of nugatoriness has been taken into account and this court finds that this circumstance which is stated as circumstance 1 in the defendant's submissions does not tantamount to special circumstance that warrant the exercise of this court's discretion to grant a stay of proceedings.

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[18] To also address the submissions on the reconciliation of s 99 of the Act providing the defendant the right to appeal vis a vis this proceeding where the plaintiff is claiming for debt due, the Federal Court in *Arumugam Pillai v Government of Malaysia* [1975] 2 MLJ 29 at p 30 decided this:

To my mind, the learned judge did not err in law in holding that s 196(3) of the Income Tax Act 1967 prevented him from entertaining the defence set up by the appellant. In this connection I need say no more than to reiterate what I said in *Sun Man*'s case, namely, that there is a string of decided cases in which it has been held that the effect of the relevant provisions of the income Tax Act is that on the service of a notice of assessment on the person assessed the tax payable under the assessment becomes due and payable at the place specified in the notice, whether or not the person appeals against the assessment, which can then be recovered by the Government by civil proceedings as a debt due to the Government, and that *on such civil proceedings brought by the Government the court has no power to entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased. Nothing which has been said by learned counsel for the appellant in this appeal would justify my entertaining any doubt as to the correctness of what I said in that case.*

[19] This court is also bound by the Federal Court's decision in *Sun Man Tobacco Co Ltd v Government of Malaysia* [1973] 2 MLJ 163 maintained that the dispute on the tax assessment is to be done by way of appeal to the SCIT as per s 99 of the Act. Any disputes on the questions of law at the said hearing before the SCIT, would then be brought to the High Court by way of case stated. This proceedings on the other hand is entirely different and separate as it is a debt recovery suit. No rules of natural justice would be breached with the proceedings taking place before the hearing of the defendant's appeals at the SCIT.

[20] As to the monthly installments that is currently undertaken by the defendant to the Inland Revenue Board, it is noted that they are for the assessments of 2018, and not for the subject matter of this proceedings ie 2011, 2012, 2013, 2014 and 2016 (encl 27, exh WYK-2).

[21] The next consideration is on the contention that there was mala fide, abuse of process and collateral attack by the plaintiff. The following events formed the basis of the defendant's said contention (classified as circumstance 2) that include:

(a) a Sarawak Report website report on 31 May 2017 implicated the defendant in receiving RM9,500,000 from the former Prime Minister for prosecuting Dato Seri Anwar Ibrahim (DSAI);

(b) on the basis that RM9,500,000 was received by the defendant, DSAI had filed a suit to expunge his criminal conviction because the defendant was improperly financially motivated to prosecute him;

(c) the defendant was called for investigation two days after he publicly stated that he was defending the former Prime Minister;

(d) the assessment for 2013 and 2014 were part and parcel of the defendant's

criminal prosecution under s 4(1) Anti-Money Laundering Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 read together with s 113(1)(a) of the said Act (WA-45–6–10 of 2018). The lead counsel tasked to prosecute the defendant was the same that had conducted DSAI's suit against him; and

(e) a month after the defendant was served notices under s 78 and 79 of the said 1967, a portion of which had already formed part of the AMLA charges.

[22] The defendant also implored this court to consider the following (though not all are listed in this judgment but all averred in encl 31 and stated in the defendant's written submissions (encl 41) are considered):

(a) in representing the former Prime Minister, the defendant was perceived to be the UMNO lawyer though the defendant was not a member of UMNO;

(b) he had sustained political attacks by opponents of the former Prime Minister and UMNO/Barisan Nasional Party; and

(c) there was a plan of action by the Inland Revenue Board, the Malaysian Anti-Corruption Commission and the Attorney General's Chambers to oppress and persecute the defendant with the aim to discourage him from acting for the former Prime Minister.

[23] Upon a careful study of the cause papers and all the documents herein, this court agrees with the plaintiff's submission that those contentions by the defendant are misplaced and rather unfortunate presumptions. This proceeding which is a tax recovery suit is premised on the assessments (additional) made for those said years which remain unpaid by the defendant. It is independent to any other criminal matters that the defendant faces or may have. Hence, at the hearing of his appeals before the SCIT, it would be incumbent upon him to forward his arguments on the over or miscalculation of the additional assessments, or that for certain years the claim would be time barred. The findings would be postulated on the figures. The presumptions of mala fide, abuse of process or collateral attack aside, the defendant's appeals are to resolve the additional assessments claimed for by the plaintiff.

[24] This court pauses here to be reminded that actions undertaken by the Inland Revenue Board are to ensure that the statutory requirements on tax are complied with. All assessments are carried out bona fide, professionally according to its statutory duties, as had been done since the beginning on figures of income, expenses etc of the taxpayer. Subsequent to this and consequentially where any payment due is in arrears, recovery will be made by way of civil suit as debt due to the Government of Malaysia. In stating this

however, there are cases of miscalculations or time-barred — those final figures will be accordingly adjusted thus not every single summary judgment connotes the concluded amount of tax to be paid. So, claims for recovery on tax due cannot collapse based on alleged motive driven by mala fide on the part of Inland Revenue Board or the plaintiff.

[25] Therefore, this circumstance 2 does not amount to a special circumstance to justify a stay of proceedings. In any event, a stay of the court's proceedings would not determine any answers to the defendant's said claims which also include that the assessments were raised to financially oppress him. This, as the plaintiff had submitted are assumptions of the defendant which are disconnected to the assessments done and served properly upon the defendant. At this point, this court does not see any abuse of process claimed to have been undertaken by the plaintiff.

[26] What the defendant categorised as circumstance 3 is the submission that there are novel and complex issues of law which requires the determination by the Federal Court in the constitutional matters. The defendant submitted there, the issues to be ventilated and decided by the Federal Court are:

(a) whether the provisions in s 106(3) of the Act is consistent with the provisions of art 121 of the Federal Constitution;

(b) whether the legal principles in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561; [2017] 5 CLJ 526 on judicial power is equally applicable to a suit filed by the Inland Revenue under s 106 of the Act;

(c) whether the court has no other duty to play other than to be a 'rubber stamp' in hearings of a summary judgment application filed by the Inland Revenue Board; and

(d) whether the trite law of proving 'triable issues' to defeat a summary judgment application is not applicable when the claiming party is the Inland Revenue Board.

[27] In deliberating whether this amounts to a special circumstance to justify a stay of the proceedings, this court goes back to the starting point of this proceedings whereby the plaintiff had initiated this proceeding to recover the tax due and payable by the defendant as per the calculations of the said additional assessments which is provided for under s 106 of the Act. The law further provides that the court shall not entertain any plea that the amount of payment sought for is excessive or incorrectly assessed or under appeal. This trite law is as per the Federal Court's decision in the *Arumugam Pillai v Government of Malaysia* [1980] 2 MLJ 283 at 287:

> The tax legislation clearly intends that the tax as assessed should first be paid and

A therefore makes provisions that such part of the tax paid as shall be determined at the final 'accounting' to be not due and payable shall be refunded. This provision of 'pay first and talk afterwards' may be arguably a harsh one but it is an intentional provision of the legislature, having regard to the incidence of tax evasion. What sympathy there is must be reserved for the Innocent who are made to suffer along with the tax-evaders.

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[28] Thus, at the moment, this court is bound by the settled legal principles for tax recovery of which proceedings must proceed unless there is a special circumstance that warrants a stay thereto. This court is mindful that O 92 r 4 of the ROC provides it inherent powers to ensure justice is done but the powers are steered by proper rules founded on principles and cannot be invoked to override substantive law (*Layar Baiduri Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2020] 8 MLJ 643 refers). The learned counsel for the defendant cited the pending hearing of the constitutional matters of which leave to appeal had been granted by the Federal Court, four months ago on 10 May 2022 as spedal circumstance for a stay of this proceedings.

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[29] There are apparent distinguishing features compared to this case at hand. The constitutional matters pertain to the summary judgments of the High Court whilst here the proceedings for the application for summary judgment (encl 17) have yet to begin. There seem to be some other interlocutory issues such as the defendant's application to file the counterclaim (encl 26) and the plaintiff's application to strike out the defendant's counterclaim (encl 22) that would need to be disposed of prior.

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[30] The defendant contends that he would suffer 'irreparable damage' to his career and livelihood and that the Inland Revenue Board would not suffer any prejudice as the judgment by the High Court includes an order for payment of post judgment interest. This is again different to the constitutional matters where the Federal Court had granted a stay of execution of the summary judgment on 21 September 2022. The stark contrast is that the summary judgment has been obtained respectively and thus it is a stay of execution as oppose to a stay of proceedings here. Furthermore, the Inland Revenue Board had no objections thereto. The special circumstances there would be different to the case at hand.

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[31] In this case, the defendant's said contention is untenable for the moment as there is no summary judgment obtained for execution to consider. A stay of the proceedings would mean that the plaintiff is deprived to achieve what it is legally entitled to whereby it is acknowledged that the plaintiff's statutory action is premised on public interest.

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[32] After much in-depth consideration, this court cannot accept

circumstance 3 as special circumstance to invoke the power to grant a stay of proceedings.

[33] Circumstance 4 which is the last basis forwarded by the defendant is that contention that there are errors in the computation of the said additional assessments on taxation and accounting standpoint. These are arguments to be heard before the SCIT which the defendant is most entitled to embark on. These arguments which are merits to the contest by the defendant, do not form special circumstances as maintained in *Kosma Palm Oil Mill Sdn Bhd & Others* at p 268 (MLJ); p 16 (CLJ):

> Having expressed my views on the law I shall now consider the motion. Both parties delved into some length on the merits of their respective case in the affidavits filed and the submission made in court. The merits of a party's case in a stay application is not a relevant matter for consideration.

[34] The proper forum for deliberation on the said merits is the SCIT. The defendant's right is not hampered as he is still at liberty to pursue all his contentions before the SCIT. If at all, questions of law may thereafter be appealed on at the High Court by way of case stated. If this court can borrow the words of Gill CJ in *Arumugam Pillai* (1975) case:

> There is indeed nothing arbitrary about imposing income tax for the purpose of raising revenue. It is contended for the appellant that he does not complain about taxation as such but about the method of recovery of such tax. So long as the method of recovery is laid down by the law, I do not see how it can be challenged. Indeed, the law does provide for an appeal against taxation to a separate tribunal from which there is further right of appeal to the High Court by way of a case stated.

[35] The defendant's recourse for the grouses are still before the SCIT that comprise of qualified, experienced officers who are well-versed in the matter. The avenue for appeal to the courts also remains open. As of now, the plaintiff should proceed in the collection of taxes, the system of which should not be allowed for delay. Essentially there are no special circumstances in this case to warrant a stay of the proceedings.

[36] The facts of the cases in the constitutional matters, *Kerajaan Malaysia lwn Berjaya Times Square Sdn Bhd* [2018] MLJU 616; [2018] 1 LNS 720 and *Kerajaan Malaysia v Ekran Bhd* [2006] 2 MLJ 749 are hereby distinguished.

[37] In the premises, the application is dismissed with costs.

Stay application dismissed.

Reported by Ashok Kumar